

111 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Southern Company Energy Marketing, Inc. and	Docket Nos. ER97-4166-019
Southern Company Services, Inc.	ER96-780-009
	EL04-124-002

ORDER DENYING MOTION FOR PROTECTIVE ORDER

(Issued April 8, 2005)

1. On February 24, 2005, Calpine Corporation (Calpine) and Shell Trading Gas and Power Corporation (Shell Trading) filed a motion for the adoption of a protective order and, on March 14, 2004, Southern Company Services, Inc.,¹ filed an unopposed motion for the adoption of a protective order in this proceeding. In this order, we find that we need not issue and hence will deny both motions for the adoption of a protective order and instead allow the parties to adopt a protective agreement among themselves.

Background

2. On December 17, 2004, the Commission issued an order on Southern Companies' updated market analysis, instituting a proceeding under section 206 of the Federal Power Act (FPA)² to determine whether Southern Companies may continue to charge market-based rates, and establishing a refund effective date.³ The December 17 Order also

¹ Southern Company Services states that it is acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (collectively, Southern Companies).

² 16 U.S.C. § 824e (2000)

³ *Southern Company Energy Marketing L.P. and Southern Company Services, Inc.*, 109 FERC ¶ 61,275 (2004) (December 17 Order).

directed Southern Companies to submit a compliance filing within 60 days, which Southern Companies submitted on February 15, 2005 (compliance filing).

3. On February 24, 2005, Calpine and Shell Trading submitted a motion for the adoption of a protective order to govern the disclosure and use of confidential, proprietary information contained in the compliance filing. Calpine and Shell Trading also requested that the Commission consider the fact that the intervenors in this proceeding did not yet have full access to the information contained in the compliance filing when it establishes the period for comments or protests on that filing.

4. On March 2, 2005, Southern Companies submitted an answer to Calpine and Shell Trading's motion, in which it stated that Southern Companies was seeking to initiate discussions with Calpine and Shell Trading aimed at developing such a protective order based on the Commission's model protective order in a timely manner.

5. On March 14, 2004, Southern Companies filed an unopposed motion for the adoption of a protective order in this proceeding. Southern Companies states that the proposed protective order is necessary to permit other parties to access certain confidential and proprietary information submitted on a non-public basis by Southern Companies, while at the same time ensuring that such information is neither publicly disclosed nor used by other parties for purposes unrelated to their participation in this proceeding. Southern Companies asserts that it is authorized to state that the currently active participants to this proceeding support the adoption of the proposed Protective Order.

6. On March 14, 2005, Calpine and Shell Trading filed a motion to extend the comment date for Southern Companies' compliance filing to 15 days after the Commission issues an appropriate protective order to govern the use of proprietary, confidential information in this matter. To ensure that the Commission had sufficient time to act on this motion in advance of the comment date, Calpine and Shell Trading also requested that the Commission shorten the period for answers to this motion, with answers due no later than March 17, 2005.

7. On March 15, 2005, a notice was issued granting Calpine and Shell Trading's request to shorten the comment period, establishing a comment date of March 18, 2005. On March 22, 2005, a notice was issued granting their motion for an extension of the comment date to and until 15 days after the issuance of an order addressing the proposed protective order.

Discussion

8. Consistent with prior orders,⁴ there is no need to issue and hence we will deny both motions for the adoption of a protective order. There is no reason why in this instance a protective agreement entered into by the parties would provide less protection than a Commission-issued protective order. In this regard, Southern Companies has indicated that the parties do not object to its proposed protective agreement and has given no reasoning why a protective order issued by the Commission is necessary in light of the parties' willingness and ability to sign onto a protective agreement among themselves. Accordingly, the parties should enter into a protective agreement with Southern Companies if they wish to gain access to the information at issue.

9. Furthermore we clarify that, under the terms of the notice, the comment date for this proceeding extends to 15 days after Southern Companies, Calpine and Shell Trading have entered into the proposed protective agreement with Southern Companies.

The Commission orders:

(A) Southern Companies' motion for issuance of a protective order is denied for the reasons discussed in the body of this order.

(B) The comment date for this proceeding is extended to 15 days after Southern Companies, Calpine and Shell Trading have entered into the proposed protective agreement with Southern Companies.

By the Commission. Commission Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ *Cranberry Pipeline Corp.*, 107 FERC ¶ 61,147 (2004); *PG&E Texas Pipeline, L.P.*, 92 FERC ¶ 61,111 (2000); *Trunkline Gas Co.*, 53 FERC ¶ 61,065 (1990).